

BILL NO. S-86-11-17 (as amended)

SPECIAL ORDINANCE NO. S-199-86

ORDINANCE AUTHORIZING THE CITY OF
FORT WAYNE TO ISSUE ITS "VARIABLE RATE DEMAND
ECONOMIC DEVELOPMENT REVENUE BONDS
(MARK P. SHAMBAUGH PROJECT) SERIES 1986"
AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Fort Wayne Economic Development Commission has rendered its Project Report for the Mark P. Shambaugh Project regarding the financing of proposed economic development facilities for Mark P. Shambaugh and the Fort Wayne Plan Commission has commented favorably thereon; and

WHEREAS, the Fort Wayne Economic Development Commission conducted a public hearing on November 25, 1986, and also adopted a resolution on November 25, 1986, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Mark P. Shambaugh complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Loan Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Mortgage and Security Agreement, the Indenture of Trust, Lease, Conditional Assignment of Lease, Consent to Lease Assignment, the Remarketing Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Letter of Credit, the Credit Agreement, the Confirming Bank Reimbursement Agreement and the Official Statement; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA THAT:

Section 1. It is hereby found that the financing of the economic development facilities referred to in the Loan Agreement, approved by the Fort Wayne Economic Development Commission and presented to this Common Council, the issuance and sale of revenue bonds, the loan of the proceeds of the revenue bonds to Mark P. Shambaugh (the "Developer") for the acquisition, construction and equipping of such facilities, the payment of the revenue bonds by the payments of the Company under the Loan Agreement, the leasing of the economic development facilities to Shambaugh & Son, Inc. under the Lease, and the securing of said bonds under the Indenture of Trust complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and will be of benefit to the health and welfare of the City of Fort Wayne and its citizens.

Section 2. The economic development facilities will consist of the acquisition, construction and equipping of a new warehouse, fabrication and office facility, to be used in the construction/engineering business of the Developer, located on the northwest corner of Cook Road and the vacated Conrail railroad, in Fort Wayne, Indiana (the "Project"). The Developer will lease the Project to Shambaugh & Son, Inc.

Section 3. At the public hearing held by the Fort Wayne Economic Development Commission, the Commission considered whether the economic development facilities would have an adverse competitive effect on any similar facilities located in or near the City of Fort Wayne, and found, based on special findings of fact set forth in the Resolution transmitted hereto, that the facilities would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution, and concludes that the economic development facilities will not have an adverse competitive effect on any other similar facilities in or near the City of Fort Wayne, and the facilities will be of benefit to the health and welfare of the citizens of the City of Fort Wayne.

Section 4. The substantially final forms of the Loan Agreement, the Mortgage and Security Agreement, the Indenture of Trust, Lease, Conditional Assignment of Lease, Consent to Lease Assignment, the Remarketing Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Letter of Credit, the Credit Agreement, the Confirming Bank Reimbursement Agreement and the Official Statement approved by the Fort Wayne Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk for public inspection.

Section 5. The City of Fort Wayne shall issue its Variable Rate Demand Economic Development Revenue Bonds (Mark P. Shambaugh Project) Series 1986, in the total principal amount of Three Million One Hundred Thousand Dollars (\$3,100,000) and maturing on December 1, 2001, which in no event shall exceed 30 years from the date of issuance of the bonds. Said bonds are to be issued for the purpose of procuring funds to pay the costs of acquisition, construction and equipping of the economic development facilities as more particularly set out in the Indenture of Trust and Loan Agreement incorporated herein by reference, which bonds will be payable as to principal, premium, if any, and interest from the payments made by the Developer under the Loan Agreement or as otherwise provided in the above described the Indenture of Trust. The bonds shall be issued in fully registered form in the denomination of \$100,000 or integral multiples thereof prior to the Conversion Date (as defined in the Indenture of Trust), and in the denomination of \$5,000 or integral multiples thereof on or after the Conversion Date, and shall be redeemable as provided in Article III of the Indenture of Trust. Payments of principal and interest are payable in lawful money of the United States of America at the

principal office of the Trustee or its successor in trust or by check or draft mailed or delivered to the registered owners as provided in the Indenture of Trust. The bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne, nor are the bonds payable in any manner from revenues raised by taxation.

Section 6. The Mayor and Clerk are authorized and directed to sell such bonds. The rate of interest per annum on the bonds shall not exceed (1) the Variable Rate as determined under the Indenture of Trust from time to time, (2) the Bank Rate as determined under the Indenture of Trust or (3) the Fixed Rate as determined under the Indenture of Trust at the Conversion Date. The bonds shall be sold to Drexel Burnham Lambert, Incorporated (the "Placement Agent/Remarketing Agent") at a price of not less than 98% of the principal amount thereof, but the Placement Agent/Remarketing Agent may charge the Developer an additional fee for its services but such fee shall not be paid from bond proceeds.

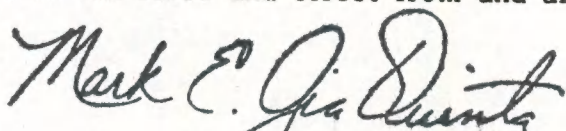
Section 7. The Mayor and Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the bonds authorized herein. The Mayor and Clerk are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of the City Attorney; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the

maximum principal amount of, interest rate on or term of the bonds as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk on the bonds may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such bonds to the Trustee named in the Indenture of Trust, and payment for the bonds will be made to the Trustee named in the Indenture of Trust and after such payment the bonds will be delivered by the Trustee to the purchaser thereof. The Mayor and Clerk shall execute and the Clerk shall deliver the bonds to the Trustee within ninety days of the adoption of this ordinance. The bonds shall be originally dated the date of authentication by the Trustee.

Section 8. The provisions of this Ordinance and the Indenture of Trust securing the bonds shall constitute a contract binding between the City of Fort Wayne and the holders of the Variable Rate Demand Economic Development Revenue Bonds (Mark P. Shambaugh Project) Series 1986, and after the issuance of said bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said bonds or the interest thereon remains unpaid.

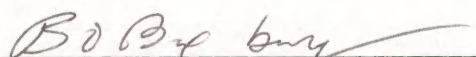
Section 9. The City hereby elects to issue the bonds pursuant to the \$10,000,000 small issue exemption set forth in Section 144(a)(4) of the Internal Revenue Code of 1986.

Section 10. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.



COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY.


Bruce O. Boxberger, City Attorney
Dated this 25th day of November, 1986

Read the first time in full and on motion by GiaQuinta,
seconded by Stier, and duly adopted, read the second time
by title and referred to the Committee Finance (and the Cit
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City County Building, Fort Wayne
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____ .M., E.

DATE: 11-25-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Read,
seconded by Stier, and duly adopted, placed on its
passage. PASSED (lost) by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> | <u>TO-WIT:</u> |
|--------------------|-------------|-------------|------------------|---------------|----------------|
| <u>TOTAL VOTES</u> | <u>8</u> | _____ | _____ | <u>1</u> | _____ |
| <u>BRADBURY</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>BURNS</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>EISBART</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>GiaQUINTA</u> | _____ | _____ | _____ | <u>✓</u> | _____ |
| <u>HENRY</u> | _____ | _____ | _____ | _____ | _____ |
| <u>REDD</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>SCHMIDT</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>STIER</u> | <u>✓</u> | _____ | _____ | _____ | _____ |
| <u>TALARICO</u> | <u>✓</u> | _____ | _____ | _____ | _____ |

DATE: 12-9-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort
Wayne, Indiana, as ~~(ANNEXATION)~~ (APPROPRIATION) ~~(GENERAL)~~
~~(SPECIAL)~~ (ZONING MAP) ORDINANCE ~~(RESOLUTION)~~ NO. S-199-86
on the 9th day of December, 1986,

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the 10th day of December, 1986,
at the hour of 1:00 o'clock P. .M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 11th day of December,
1986, at the hour of 10:00 o'clock A. .M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

ORDINANCE AUTHORIZING THE CITY OF
FORT WAYNE TO ISSUE ITS "VARIABLE RATE DEMAND
ECONOMIC DEVELOPMENT REVENUE BONDS
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AND APPROVING OTHER ACTIONS IN RESPECT THERETO

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WHEREAS, the Fort Wayne Economic Development Commission conducted a public hearing on ~~December~~ ^{Nov} 25, 1986, and also adopted a resolution on ~~December~~ ^{Nov} 25, 1986, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Mark P. Shambaugh complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Loan Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Mortgage and Security Agreement, the Indenture of Trust, Lease, Conditional Assignment of Lease, Consent to Lease Assignment, the ~~the~~ Remarketing Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Letter of Credit, the Credit Agreement, the Confirming Bank Reimbursement Agreement and the Official Statement; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA THAT:

Section 1. It is hereby found that the financing of the economic development facilities referred to in the Loan Agreement, approved by the Fort Wayne Economic Development Commission and presented to this Common Council, the issuance and sale of revenue bonds, the loan of the proceeds of the revenue bonds to Mark P. Shambaugh (the "Developer") for the acquisition, construction and equipping of such facilities, the payment of the revenue bonds by the payments of the Company under the Loan Agreement, the leasing of the economic development facilities to Shambaugh & Son, Inc. under the Lease, and the securing of said bonds under the Indenture of Trust complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and will be of benefit to the health and welfare of the City of Fort Wayne and its citizens.

Section 2. The economic development facilities will consist of the acquisition, construction and equipping of a new warehouse, fabrication and office facility, to be used in the construction/engineering business of the Developer, located on the northwest corner of Cook Road and the vacated Conrail railroad, in Fort Wayne, Indiana (the "Project"). The Developer will lease the Project to Shambaugh & Son, Inc.

Section 3. At the public hearing held by the Fort Wayne Economic Development Commission, the Commission considered whether the economic development facilities would have an adverse competitive effect on any similar facilities located in or near the City of Fort Wayne, and found, based on special findings of fact set forth in the Resolution transmitted hereto, that the facilities would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution, and concludes that the economic development facilities will not have an adverse competitive effect on any other similar facilities in or near the City of Fort Wayne, and the facilities will be of benefit to the health and welfare of the citizens of the City of Fort Wayne.

Section 4. The substantially final forms of the Loan Agreement, the Mortgage and Security Agreement, the Indenture of Trust, Lease, Conditional Assignment of Lease, Consent to Lease Assignment, the Remarketing Agreement, the Tender Agent Agreement, the Guaranty Agreement, the Letter of Credit, the Credit Agreement, the Confirming Bank Reimbursement Agreement and the Official Statement approved by the Fort Wayne Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk for public inspection.

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principal office of the Trustee or its successor in trust or by check or draft mailed or delivered to the registered owners as provided in the Indenture of Trust. The bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne, nor are the bonds payable in any manner from revenues raised by taxation.

Section 6. The Mayor and Clerk are authorized and directed to sell such bonds. The rate of interest per annum on the bonds shall not exceed (1) the Variable Rate as determined under the Indenture of Trust from time to time, (2) the Bank Rate as determined under the Indenture of Trust or (3) the Fixed Rate as determined under the Indenture of Trust at the Conversion Date. The bonds shall be sold to Drexel Burnham Lambert, Incorporated (the "Placement Agent/Remarketing Agent") at a price of not less than 98% of the principal amount thereof, but the Placement Agent/Remarketing Agent may charge the Developer an additional fee for its services but such fee shall not be paid from bond proceeds.

Section 7. The Mayor and Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the bonds authorized herein. The Mayor and Clerk are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of the City Attorney; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the

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Section 8. The provisions of this Ordinance and the Indenture of Trust securing the bonds shall constitute a contract binding between the City of Fort Wayne and the holders of the Variable Rate Demand Economic Development Revenue Bonds (Mark P. Shambaugh Project) Series 1986, and after the issuance of said bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said bonds or the interest thereon remains unpaid.

Section 9. The City hereby elects to issue the bonds pursuant to the \$10,000,000 small issue exemption set forth in Section 144(a)(4) of the Internal Revenue Code of 1986.

Section 10. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Passed and adopted this _____ day of December, 1986.

FORT WAYNE COMMON COUNCIL

Presiding Officer

Attest:

Clerk

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on this _____
day of _____, 1986, at the hour of: _____.m.

Clerk

Approved and signed by me on this _____ day of _____, 1986.

Mayor, City of Fort Wayne

Bill No. O-86-11-17 Special Ordinance No O-199-86

ORDINANCE AUTHORIZING THE CITY OF
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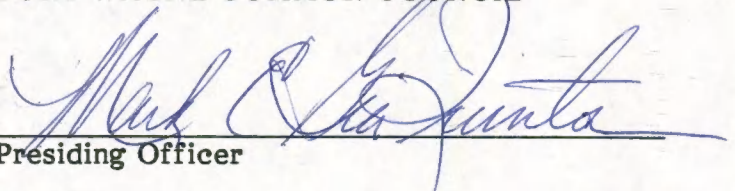
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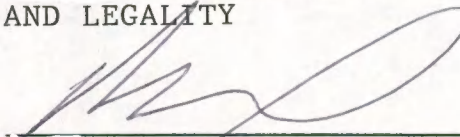
Section 10. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

Passed and adopted this _____ day of December, 1986.

FORT WAYNE COMMON COUNCIL


Presiding Officer

APPROVED AS TO FORM
AND LEGALITY


Bruce O. Boxberger, City Attorney

BILL NO. S-86-11-17

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AUTHORIZING THE CITY

OF FORT WAYNE TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE

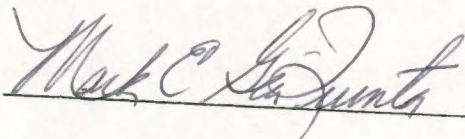
BONDS (MARK P. SHAMBAUGH PROJECT) SERIES 1986" AND APPROVING

OTHER ACTIONS IN RESPECT THERETO

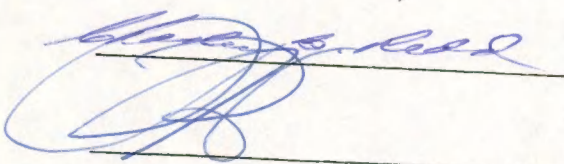
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(~~RESOLUTION~~)

YES

NO



MARK E. GiaQUINTA
CHAIRMAN



CHARLES B. REDD
VICE CHAIRMAN

PAUL M. BURNS

JANET G. BRADBURY

JAMES S. STIER

CONCURRED IN

12-9-86

SANDRA E. KENNEDY
CITY CLERK